IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19-07-2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM
and
THE HON'BLE MR.JUSTICE AR.RAMALINGAM

W.P.No.7668 of 2001

1. M. Mouttoucannou
2. L. Mohan
3. L. Lakshmana Babuji
4. C. Latchmynandane
5. R. Souparamaniane
6. R. Harikrishnan
7. Sabarimalai Nathan
8. G. Madurai
9. R. Ramakrishnan
10. R. Nehru
11. A. Gnanasingh Vilfred
12. A. Sherfuddin
13. S. Shanmugam
14. V. Ramalingam
15. N. Krishnaswamy
16. N. Pughazendhi .. Petitioners

vs.

1. Union of India
   rep. by the Government of
   Pondicherry, through the
   Secretary to Government
   for Cooperation,
   Chief Secretary, Pondicherry.

2. Registrar of Cooperative
   Societies, Office of the
   Cooperative Department
   Thattanchavady
   Pondicherry.

3. G. Jothimani
4. T. Padmavathy
5. D. Krishnamoorthy
6. M. Jothiraju
7. A. Irusappan

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. E. Sarangapani
9. V. Venkata Srinivasacharayalu
10.M. Shanthi
11.R. Rangababu
12.S. Dhanasuraj
13.R. Djeacoumar
14.S. Murali
15.P. Karunakaran
16.P. Ramachandraiah
17.Chinta Madhusudana Rao
18.J. Govindannaidu
19.P. Thiagarajan
20.A. Thangarasu

21. Central Administrative Tribunal
Chennai 104. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for an issuance of a writ of certiorarified mandamus as stated therein.

For petitioners : Mr. C.K. Chandrasekaran

For respondents 1 and 2 : Mr. Syed Mustafa for Government Pleader (Pondicherry)

Mr. L. Swaminathan for R.3 to 5

Mr. T. Ganapathyappan for R.6 to 12, 14 to 19

No appearance for R.13 and 20.

..

ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

Aggrieved by the order of the Central Administrative Tribunal, Madras Bench dated 29.09.2000 made in O.A.No.565 of 1997, rejecting their request to grant regular promotion as Senior Inspectors with effect from December, 1990 with all attendant benefits and further promotion as Co-operative Officers as per the Rules with due seniority over respondents 3 to 20, the petitioners numbering 16 have preferred the above writ petition.

2. The brief facts are as follows:

(a) The petitioners were appointed as Junior Inspectors in the year 1981-82, pursuant to written test and interview as per the Recruitment Rules of the Government of Pondicherry, Cooperative

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Department Group-C Posts (non-gazetted) Recruitment Rules, 1978. Under the Rules, the post of Junior Inspector was to be filled up by direct recruitment, through a Recruitment Committee and the candidates should be graduates. After recruitment, the Junior Inspector has to pass departmental test in Cooperation, auditing, banking, account test, etc., if they were not qualified already in those subjects. The petitioners are graduates and also qualified in departmental tests. Their appointment as Junior Inspectors was fully in accordance with the Recruitment Rules. However, after selection as per the Recruitment Rules, appointment orders issued to them on ad hoc basis as Junior Inspector in Co-operative Department. They continued as such almost for a decade on ad hoc basis. However, they discharged their duties as regular Junior Inspectors without any interruption.

(b) In the year 1990, the Government, belatedly regularised their services as Junior Inspectors. At the same time all of them were promoted as Senior Inspectors with effect from 31.12.1990. As per Recruitment Rules, Junior Inspectors with five years of service are entitled to be promoted as Senior Inspectors. 75% of the posts of Senior Inspectors have to be filled up on promotion basis and 25% has to be filled up by direct recruitment. The petitioners were selected by a Regular Departmental Promotion Committee in the year 1990. As per the Government Order, ad hoc promotion can be made only if the vacancy is a short term vacancy. After their promotion, the Cooperative Department made direct recruitment also and appointed 18 persons, which would go to show the availability of vacancies in the posts of Senior Inspectors. They approached Central Administrative Tribunal, Madras Bench by filing OA.No.565 of 1997 for a direction to the Pondicherry Government to regularise their services as Senior Inspectors from the date of their promotion with all attendant benefits. During the pendency of the said OA., on 05.11.1998, the Department issued a tentative seniority list of Junior Inspectors. On 04.12.1998, the Department issued a final seniority list of Junior Inspectors without considering their objections. The said list ignored their entire ad hoc service from 1981-82, but counted their service only from the dates of regularisation as Junior Inceptors in 1990. By order dated 28.04.1999, the Registrar of Cooperative Societies, Pondicherry, second respondent herein, treated the petitioners as Senior Inspectors only from 1995 instead of 1990. Hence they amended OA.No.565 of 1997 challenging order dated 28.04.1999 to the extent it denied their regularisation as Senior Inspectors from the date of their initial promotion in 1990. The petitioners also questioned two other memorandums promoting respondents 3 to 5, 8 and 14 as Cooperative Officers as illegal and unconstitutional. They sought for a consequential direction to the Department to grant them regular promotion as Senior Inspectors with effect from December, 1990.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. The Cooperative Department filed a reply statement stating that the petitioners could not be treated as regularly appointed Juniors Inspectors though their appointment was made as per the Rules, because they were in excess to the sanctioned posts. According to the Department, regular vacancies of Junior Inspectors became available only in the year 1990, when six of them were regularised in service with effect from 10.03.1990. Considering their grievance, the Government created 10 deputation reserve posts in the cadre of Junior Inspectors vide Government Order dated 01.11.1990, pursuant to which the rest of the petitioners were regularised in service with effect from 01.11.1990. Since the petitioners did not possess five years of service as regular Junior Inspectors, their promotion as Senior Inspectors in 1990 could only be treated as ad hoc and hence, the petitioners were rightly appointed as Senior Inspectors from 1995. Further, in the year 1990, there were only 46 vacancies of Senior Inspectors to which, if the ratio of 1:3 was applied, 12 had to be filled up by direct recruitment and 34 by promotion. However, for want of Junior Inspectors, 18 posts were filled up by direct recruitment and the remaining were filled up by promotion.

4. The Tribunal, after finding that the applicants (petitioners herein) were given appointment as Junior Inspectors on purely temporary and ad hoc basis and in the absence of regular vacancies, and also finding that none of the applicants had put in five years of service as Junior Inspector, which is a pre-condition for promotion to the post of Senior Inspector and further finding that ad hoc services rendered by them were not counted for qualifying service, rejected their application. The Tribunal has also concluded that even though regularisation orders were passed in the year 1990 regularising them in the posts of Junior Inspectors, none of them had challenged the said order and it is not now open to them to raise the question after an inordinate delay. Questioning the said order, as stated earlier, the petitioners have approached this Court by way of writ petition.

5. Heard Mr. C.K. Chandrasekaran, learned counsel for the petitioners, Mr. Syed Mustafa, learned counsel appearing for Government Pleader (Pondicherry) for respondents 1 and 2, Mr. L. Swaminathan, learned counsel for R.3 to R.5 and T. Ganapathiyappan, learned counsel for R.6 to R.12, R.14 to R.19.

6. It is seen from the averments made in the counter affidavit filed by the Registrar of Cooperative Societies, Government of Pondicherry that the petitioners were initially recruited as Junior Inspectors purely on ad hoc basis, regularised in the said posts of Junior Inspectors with effect from 10.03.1990 and 01.11.1990 and promoted to the posts of Senior Inspectors on ad hoc basis as detailed below.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Sl. No.	Name of the Official	Date of appointment to the post of Junior Inspector on ad hoc basis.	Date of regularisation in the post of Junior Inspector	Date of promotion as Senior Inspector on Ad hoc basis
1.	R. Ramakrishan	21.08.81	10.03.90	13.12.90
2.	A. Sharfudin	26.08.81	10.03.90	13.12.90
3.	C. Lakshminathan	25.08.81	10.03.90	13.12.90
4.	G. Madurai	24.08.81	10.03.90	13.12.90
5.	V. Ramalingam	20.08.81	10.03.90	13.12.90
6.	S. Shanmugam	03.10.81	10.03.90	13.12.90
7.	L. Mohan	21.08.81	01.11.90	13.12.90
8.	R. Souparamanian	21.08.81	01.11.90	13.12.90
9.	K. Lakshmana babuji	25.08.81	01.11.90	13.12.90
10.	M. MottuKannu	21.08.81	01.11.90	13.12.90
11.	N. Krishnasamy	13.01.82	01.11.90	13.12.90
12.	N. Pugazhendy	15.04.82	01.11.90	13.12.90
13.	R. Gunasekaran (expired)	20.05.82	01.11.90	13.12.90
14.	K. Gnanasing Wilfred	17.06.82	01.11.90	13.12.90
15.	V.G. Sabarimalainathan	11.06.82	01.11.90	13.12.90
16.	R. Harikrishnan	25.08.81	01.11.90	13.12.90
17.	R. Nehru	21.10.82	01.11.90	19.11.92

As stated in the counter affidavit, the petitioners were recruited as Junior Inspectors purely on ad hoc basis in the years 1981-82. The appointment order of the petitioners, which finds a place at page 2 of the typed set filed by the petitioners reads as under.

"2. The terms of appointment are as follows:
(i) The appointment is temporary and on ad hoc basis AND WILL NOT CONFER ANY PERMANENT / TEMPORARY EMPLOYMENT.
(ii) The appointment may be terminated at any time without notice ...."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The appointment order shows that the appointment of petitioners as Junior Inspector in the Cooperative Department, Government of Pondicherry is temporary and on ad hoc basis. The learned counsel appearing on behalf of Government Pleader (Pondicherry) heavily relying on the terms of appointment would contend that their appointment was purely temporary and on ad hoc basis; hence the Department as well as the Tribunal is justified in rejecting their claim.

7. Though the appointment order / memorandum makes it clear that the appointment was temporary and on ad hoc basis, Mr. C.K. Chandrasekaran, learned counsel appearing for the petitioners brought to our notice that the petitioners were posted either in the existing vacancy or newly created post. The annexure to the memorandum of appointment, which finds a place at page 3 of the typed set of papers, amply supports the above claim. It is also brought to our notice that at the end of the said memorandum, while marking a copy of the said memorandum to the Deputy Registrars/Sub-Registrars/Dairy Development Officers, the following statement has been made:-

> " When the candidates report for duty they may be appointed as Junior Inspector purely temporary and on ad hoc basis against the existing vacancies. (emphasis supplied) They are requested to collect the attestation forms for verification of character and antecedents after the candidates join duty and forward the same to this Department. "

The above statement makes it clear that though the appointments were temporary and on ad hoc basis, the petitioners were appointed against the "existing vacancies".

8. In addition to the same, it is also brought to our notice that copy of the appointment order / memorandum was communicated to Employment Exchange, Pondicherry for their reference. It is not in dispute that on receipt of this communication, their names will be struck off in the Employment Exchange. In such a circumstance, as rightly pointed out by the learned counsel for the petitioners, we are unable to accept the stand taken by the Department as well as the conclusion arrived at by the Tribunal.

9. Yet another important aspect to be considered is that, as pointed out by the learned counsel for the petitioners, is that Recruitment Rules of the year 1984 alone are applicable to the petitioners and the Department as well as the Tribunal had committed an error in relying on the Recruitment Rules, 2000 with reference to the post of Senior Inspector. It is not in dispute that Recruitment Rules, 1984 was notified on 23.06.1984. Since the petitioners were

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

appointed as Junior Inspectors in the year 1981 and regularised in the year 1990 and promoted as Senior Inspectors on 13.12.1990, as rightly pointed out, Recruitment Rules, 1984 alone are applicable to them. A perusal of the said Rules shows that in so far as the post of Senior Inspector in Co-operative Department is concerned, the method of recruitment is 75% (failing which by direct recruitment) and 25% by direct recruitment. The Rules provide that Junior Inspectors, who have put in a "qualifying service of 5 years" and who have passed the departmental tests in Co-operation, Auditing, Book-keeping and Banking conducted by the Tamil Nadu Public Service Commission and Accounts Test for Subordinate Officers conducted by the Pondicherry Administration, are eligible to be considered for promotion.

10. We have already referred to the details regarding petitioners' date of appointment to the post of Junior Inspector and date of regularisation in the post of Junior Inspector in the earlier part of our order. Applying 1984 Recruitment Rules, undoubtedly, all the petitioners had put in the qualifying service of five years. However, the Department as well as the Tribunal, by relying on 2000 Recruitment Rules, rejected the claim of the petitioners. It is not in dispute that 2000 Recruitment Rules, have been published in the Gazette only on 25.04.2000 and the Tribunal's order is dated 29.09.2000. No doubt, the 2000 Recruitment Rules, insist that Junior Inspectors of Co-operative Society who have put in five years' service in the grade rendered after appointment thereto on a regular basis and who have passed departmental tests in co-operation etc., and Accounts test for Subordinate Officers conducted by the Pondicherry Administration are eligible for promotion as Senior Inspectors. Inasmuch as the Recruitment Rules, 2000 have been published in the gazette of Government of Pondicherry only on 25.04.2000, as rightly pointed out, Recruitment Rules, 1984 alone would govern the claim of the petitioners and if that be so, the Rules insist only qualifying service of five years and not five years of service on regular basis. We are satisfied that the contention of the learned counsel for the petitioners is well founded and the Department as well as the Tribunal committed an error in applying the Recruitment Rules, 2000.

11. In the case of M.K. Shanmugam vs. Union of India reported in AIR 2000 S.C. 2704, the Hon'ble Supreme Court, after referring earlier decisions, in para 7 has concluded that,

> "7. ..... but all these decisions do not point out that in case the promotions had been made ad hoc and they are subsequently regularised in the service in all the cases, ad hoc service should be reckoned for the purpose of seniority. It is only in those cases where initially they had been recruited even though they have been appointed ad

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

hoc the recruitment was subject to the same process as it had been done in the case of regular appointment and that the same was not a stop gap arrangement. ..... "

12. In the case of P.V.T. Phillip vs. P. Narasimha Reddy reported in 1993 (25) Administrative Tribunals Cases 629, the Hon'ble Apex Court has discussed actual service as well as the regular service. The following conclusion in para 10 is pressed into service.

"10. ..... We have sufficiently detailed the appellant's service record which shows that in fact he had served as a Jailor for more than 5 years and had fulfilled the qualifying period of service under the Rule for promotion to the post of the Deputy Superintendent of Jails. The Rule does not in terms require that the service as a Jailor should be a regular service. It merely requires experience as a Jailor for a minimum period of five years. "

We have already pointed out that the relevant Recruitment Rules 1984, require the fulfillment of qualifying period of service of five years and do not require that the service should be on regular service.

13. In the case of Suraj Parkash Gupta vs. State of J & K reported in 2000 (7) S.C.C. 561, the following conclusions in paragraphs 59 and 62 are relevant.

"59. We are unable to hold that the entire service of a promotee continued beyond 6 months without consulting the Commission must be treated as non est and should stand wiped out altogether and that only service rendered in accordance with rules can be retrospectively regularised. "

"62. This principle is supported by ample authority. Procedural inaction towards promotees, it has been held, can be "rectified". This is explained in the three-Judge Bench case in State of W.B. v. Aghore Nath Dey (1993) 3 S.C.C. 371. In that judgment propositions (A) and (B) laid down in Direct Recruit case were explained by Verma,J. (as he then was). It was pointed out that proposition (A) where it was held that the ad hoc service would not count was one where the same was stopgap (i.e. and remained as such). In proposition (B) it was said that ad hoc service could count in certain situations, such as where there was only a "procedural" irregularity in making appointments according to rules. In such a situation, the irregularity can be subsequently "rectified". In such a case, such ad hoc / stopgap or temporary service could be counted. Again in Syed Khalid Rizvi case it was held by Ramaswamy,J. speaking

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

for the three-Judge Bench that propositions (A) and (B) in Direct Recruit case had to be read with para 13 therein. Similarly, in I.K. Sukhija vs. Union of India, Nanavathi,J. explained propositions (A) and (B) by reference to Aghore Nath Dey case referred to above. "

14. In the case of P.D. Aggarwal vs. State of U.P. reported in AIR 1987 S.C. 1676, while considering the amended Rules of U.P. Service of Engineers Class II , the Hon'ble Supreme Court has held that, the amendment Rules more particularly Rules 3(c), 5 and 6 of 1969 Rules as well as R.23 of 1971 Amended Rules are wholly arbitrary and discriminatory and also they are violative of Arts.14 and 16 of the Constitution. The benefits that have been conferred on the temporary Assistant Engineers who have become members of the service after being selected by the Public Service Commission in accordance with the Service Rules to have their seniority reckoned in accordance with the provisions of R.23 as it was before amendment in 1971, i.e. from the date of their becoming members of the service cannot be taken away by giving retrospective effect to the Rules of 1969 and 1971 as it is arbitrary, irrational and not reasonable.

15. In the case of P. Mohan Reddy vs. E.A.A. Charles reported in 2001 S.C.C. (Labour and Service) 718, the Supreme Court has held that unless the rule amending the criteria is retrospective, employees appointed prior to the amendment are nonetheless entitled to determination of seniority under the pre-amendment rule.

16. As against these decisions, the contesting respondents have also referred to the following decisions of the Supreme Court in support of their claim. In the case of Maharashtra Vikrikar Karamchari Sangathan vs. State of Maharastra reported in 2000 (1) Supreme 225, it is held that if there is patent violation of the quota rule, and promotees are appointed temporarily in excess of quota fixed for the promotees, pushing down principle that has to be applied in fixing seniority and such promotees cannot claim seniority on the ground that they have already put in number of years of service in promoted post.

17. In the case of A.G. Sainath Reddy vs. The Government of A.P. reported in 2003 (4) CTC 571, the Supreme Court has held that temporary and provisional appointment do not confer any right for continuance in post and to claim preference for future appointments.

18. In the case of State of Bihar vs. V. Kameshwar Prasad Singh reported in 2000 (4) Supreme 197, it is held that promotion is only ad hoc and not according to Rules and made as a stop gap arrangements, and officiation on such post cannot be taken into account for considering seniority. Similar view has been expressed

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

in the case of State of Haryana vs. Haryana Veternaty & A.H.T.S. Association reported in 2000 (6) Supreme 282.

19. The above decisions, no doubt, make it clear that in the absence of sanctioned post and cadre, the appointment / promotion is only on ad hoc basis, i.e., stop gap arrangement; undoubtedly, the said period cannot be counted for promotion. However, in our case, as discussed in earlier paras, the factual details are different, hence those decisions are not applicable to this case. It is our duty to point out our decision rendered in W.P.No.11258 of 2001 on 30.06.2005. The question that was posed for consideration is, whether the ad hoc promotion granted with effect from 01.10.1993 has to be counted from the said date in Group-B post, as claimed by the applicant-second respondent and accepted by the Tribunal or the period of ad hoc service cannot be taken into account as claimed by the ICF Administration. In that case, after considering the decisions of the Supreme Court in the case of State of W.B. vs. Aghore Nath Dey (1993 (3) S.C.C. 371); Ajit Kumar Rath vs. State of Orissa (AIR 2000 S.C. 85); Swapan Kumar Pal vs. Samittabhar Chakraborty (2001 (5) S.C.C. 581); Direct Recruit Class II Engg. Officers' Association vs. State of Maharashtra (AIR 1990 S.C. 1607) and Rudra Kumar Sain vs. Union of India (2000 (8) S.C.C. 25), after finding that there is no specific rule considering the ad hoc service in the Railway Board Rules and taking note of the fact that the Tribunal, on an erroneous approach, concluded that the delay was caused by the Department and also taking note of the fact that in the Service Regulations, selection to Group-B service by promotion is by a regularly constituted Departmental Promotion Committee (DPC) and the process of selection consists of written test, viva-voce, etc., and of the fact that the ad hoc promotion is only a temporary appointment de hors the Rules pending regular selection without conferring any right to regularisation of service, set aside the order of the Tribunal directing the ICF administration for regularising the services in Group-B in the post of Assistant Engineer and allowed the writ petition filed by the Administration. In the light of the factual details available, as discussed in that decision, we are of the view that the same is not applicable to the case on hand.

20. We have already extracted the terms of appointment, intimation to the Employment Exchange, the relevant Rules applicable to the petitioners, namely 1984 Recruitment Rules, conditions prescribed therein, etc., which abundantly support the claim of the petitioners. We are also satisfied that the stand of the Department that the applicants / writ petitioners cannot be promoted as Senior Inspectors in 1990, since they did not have five years of regular service as Junior Inspectors is untenable and illegal. As pointed out earlier, 1984 Recruitment Rules prescribe that for promotion the post of Senior Inspector, Junior Inspectors with five years of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

qualifying service are eligible. In other words, the Rules do not prescribe five years of regular service. The petitioners have also established that they were duly selected by proper departmental Promotion Committee, as per the Rules and against clear vacancies in the posts of Senior Inspectors. If so, as rightly pointed out, their services from 1990 when they were initially promoted cannot be ignored. The order dated 28.04.1999, regularising the petitioners as Senior Inspectors only from 1995 onwards and the order dated 28.04.1990 promoting respondents 3 to 20 as Cooperative Officers, ignoring the applicants / petitioners are illegal and against the Recruitment Rules to the extent they overlooked the seniority of the petitioners as Senior Inspectors from 1990 itself.

Under these circumstances, the impugned order made in O.A.No.565 of 1997 dated 29.09.2000 passed by the Central Administrative Tribunal is set aside and the petitioners are entitled all consequential benefits as claimed. The writ petition is allowed. No costs.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar
Central Administrative
Tribunal, Madras Bench
Chennai 600 104.

2. The Chief Secretary
Union of India,
Govt. of Pondicherry
Pondicherry.

3. - do - Through the Secretary to Government
for Co-operation,
Pondicherry.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. The Registrar of Co-op. Societies,
Office of the Co-operative Department,
Thattanchavady, Pondicherry.

+ 1 CC TO M/S ROW & REDDY, ADVOCATE SR NO 29351

+ 1 CC TO MR.L. SWAMINATHAN, ADVOCATE SR NO 29673

+ 1 CC TO SENIOR GOVT. PLEADER FOR PONDICHERRY SR NO 29578

Order in
W.P.No.7668 of 2001

mab (co)

bp/21.7

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/